

IN THE FIFTH JUDICIAL CIRCUIT
Fort Benning, Georgia 31905

UNITED STATES

v.

WILLIAM L. CALLEY, JUNIOR
FIRST LIEUTENANT
UNITED STATES ARMY

)
)
) Response to Defense Request for
) a Writ of Prohibition or Other
) Appropriate Relief
)
)
)

Now comes the Government and requests that the Military Judge deny the Defense request for a Writ of Prohibition or Other Appropriate Relief for the following reasons:

I

Contrary to the assertions of the Defense, it is well established that a general court-martial convening authority may grant or promise a person immunity from prosecution. United States v. Kirsch, CM 409792, 34 CMR 553 (1964). This authority is now also expressly provided in the Manual for Courts-Martial.

"An authority competent to order a person's trial by general court-martial may grant or promise him immunity from trial . . . Para. 68h, MCM, 1969, (Rev).

II

The Defense has failed to cite any authority to support its standing to object to the presumed grants of immunity. Research by Government counsel has also failed to discover any authority to support the Defense position.

The Government contends that the matter of immunity is a matter strictly between the Government and the witness to whom a grant of immunity is provided. A legal grant of immunity is only used to insure the giving of

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relevant testimony. In fact, a witness can be compelled to testify even if the evidence given tends to incriminate the witness, after an effective grant of immunity is approved. Thus it would appear that the Defense is attempting to protect the rights against self incrimination of potential witnesses. Any hypothetical impingement of a witness' rights cannot be objected to by an accused unless the recognized rights of the accused are also adversely affected. The Court of Military Appeals, speaking through Judge Latimer, answered a similar argument as follows:

In every instance where the privilege (against self incrimination) is operative, a witness has the personal choice of either answering the question put to him or exercising the option which the law gives him to refuse to respond. (Citation omitted.) But that is a matter between the witness and the court as representative of the sovereignty which called it into being. The accused does not have the right to demand that the witness be reminded of his right to remain silent, nor does he possess the right to assert the privilege for the witness. (Citation omitted.) It necessarily follows that the accused may not complain if the law officer coerces a witness to testify against him, by erroneously refusing to recognize a proper claim of this privilege . . . United States v. Murphy, 7 USCMA 32, 21 CMR 158 (1956). See also Para. 150b, MCM, 1969, (Rev).

Because the Defense has no standing to object to any such proposed grant of immunity the Defense Request should be promptly and completely denied.

Respectfully submitted,

This 23rd day of April 1970

SIGNED

AUBREY M. DANIEL, III
CPT, JAGC
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SIGNED

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